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Attorneys for Deutsche Bank National Trust Company as Trustee for BCAP LLC Trust 2007-AA2; Recontrust Company, N.A., and BAC Home Loans Servicing, L.P.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

ALLEN R. HAKES, Plaintiff, v. DEUTSCHE BANK NATIONAL TRUST COMPANY, as Trustee on behalf of BCAP LLC Trust 2007-AA2, a National Association; RECONTRUST COMPANY, N.A., a National Association; BAC HOME LOANS SERVICING, L.P., a Texas Limited Partnership; and DOEs 1-10, Defendants	Case No. 2:11-cv-00663-DB DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' VERIFIED COMPLAINT PURSUANT TO FED.R.CIV.P. 12(b)(6)
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Deutsche Bank National Trust Company as Trustee for BCAP LLC Trust 2007 - AA2 ("Deutsche Bank"), ReconTrust Company, N.A. ("ReconTrust"), and BAC Home Loans Servicing, L.P., ("BAC") (collectively "Defendants") by and through their undersigned counsel, hereby submit their Motion to Dismiss Plaintiff's Verified Complaint Pursuant to Fed.R.Civ.P. 12(b)(6), as follows:

1. Defendants respectfully request the Court dismiss Plaintiff's Complaint with

prejudice, pursuant to Fed.R.Civ.P. 12(b)(6), because a previous action arising out of the same facts against the same parties, or parties in privity therewith, was recently dismissed with prejudice, case number 11-cv-00001-TS. Accordingly, this action is barred in its entirety by the doctrine of claim preclusion.

2. Defendants also request dismissal with prejudice pursuant to Fed.R.Civ.P. 12(b)(6), because each claim for relief is an attempt to assert a private right of action under the Home Affordable Modification Program (“HAMP”), even though the claims are disguised as arising under state law.

3. Finally, Defendants request dismissal with prejudice pursuant to Fed.R.Civ.P. 12(b)(6), because Plaintiff’s claims fail to allege the legal and factual elements necessary to show an entitlement to relief.

WHEREFORE, Defendants request the Court grant their Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6), and provide such other relief as it deems proper.

DATED this 15th day of August, 2011.

Respectfully submitted,

s/ Philip D. Dracht

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15th day of August, 2011, the foregoing **Motion to Dismiss** was filed with the Clerk of the Court using the ECF case filing system and served upon the following:

Abraham Bates, Esq.
Wasatch Advocates, LLC.
2825 E. Cottonwood Pkwy, Suite 500
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s/Philip D. Dracht